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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GUMERSINDO CERVANTES,

Defendant and Appellant.

A124073

(Marin County
Super. Ct. No. SC-153842A)

Defendant Gumersindo Cervantes entered pleas of guilty to felony charges of attempted murder and child endangerment, as well as a misdemeanor charge of driving under the influence (DUI). After being sentenced in accordance with a negotiated disposition to state prison for a total term of eleven years and four months for the felonies, the trial court imposed a concurrent six-month term for the misdemeanor. This appeal involves only the issue of \$1,444 fine imposed for the misdemeanor. Defendant contends that a remand is required because the trial court issued only a bottom-line figure, failing to designate the various components of that sum. After rejecting a pair of arguments from the Attorney General as to why we need not reach the merits, we conclude that defendant's contention has no merit. We thus affirm the judgment of conviction.

BACKGROUND

In early 2008 defendant was charged by information with two counts of attempted murder, and single counts for the felonies of first degree burglary and child endangerment. Two misdemeanors were also alleged. There are fleeting references in

the record to “two misdemeanor cases” that are described as “trailing.” The parties began to discuss an omnibus plea bargain of the felony and the misdemeanor charges.

On October 2, 2008, the parties reached a negotiated disposition of all pending charges. Defendant agreed to plead guilty to one count of attempted murder and the child endangerment charge, as well as admitting certain of the accompanying enhancement allegations, and receive an aggregate sentence of 11 years and 4 months in state prison. The remaining charges and allegations of the information would be dismissed, as would one of the trailing misdemeanors. However, the other trailing case, described as “a misdemeanor DUI” would be “part of the disposition today.” Defendant completed a change of plea form for the two felonies, and a separate “DUI change of plea” for the trailing misdemeanor.

Defendant was advised that he faced up to \$30,000 for various “penal fines” and “restitution fines” for the felonies. With respect to “the DUI case, CR-153784,” defendant was informed that his guilty plea would make him liable for “fines and fees” of “\$1,444 for the fine, a \$100 restitution fine, a \$100 probation revocation fine, and a \$20 court security fee,” but that he would have “the option of asking the court to have those fines and fees satisfied by his custody time at the time of sentencing in this case.”

After receiving the appropriate admonitions required, defendant entered pleas of guilty and admitted certain of the allegations, following which the remainder were dismissed.

Although initially inclined to reject the negotiated disposition unless defendant consented to an additional year of imprisonment, at the strong urging of the attempted murder victim the court grudgingly accepted the agreed-upon deal. Accordingly, on January 16, 2009, defendant was sentenced to state prison for an aggregate term of eleven years and four months. As the court was calculating the number of custody credits to which defendant was entitled, the following ensued:

“THE COURT: So you have 595 days of actual time in custody. And is there a misdemeanor case here? What happened to that?”

“MS. PRINCE [THE PROSECUTOR]: Your Honor, he pleaded guilty on October the 2nd in the DUI case.

“THE COURT: And had he been sentenced?

“MS. PRINCE: I believe that you did sentence him.

“THE COURT: When did he plead guilty to that?

“MS. PRINCE: October the 2nd. And the other misdemeanor case . . . that was dismissed

“THE COURT: He’s not been sentenced in that case.

“MS. BOSWORTH [DEFENSE COUNSEL]: Which case number are you referring to?

“MS. PRINCE: CR-153784.

“THE COURT: In that case, are time and arraignment for judgment waived?

“MS. BOSWORTH: Your Honor—yes. I just note that the . . . minutes indicate that on October 2nd counsel agreed that no additional jail time would be imposed at sentencing.

“MS. PRINCE: However, the fines for the DUI were to be [converted].

“MS. BOSWORTH: Converting the fines would be fine.

“THE COURT: Okay. So in the DUI case, 153784, any legal cause why judgment should not now be imposed?

“MS. BOSWORTH: No. Waive time on the judgment.

“THE COURT: I’ll sentence Mr. Cervantes in that case to six months in the county jail concurrent with the time he’s presently serving, plus a fine in the amount of \$1,444 consecutive [*sic*] to the fine in the attempted murder case.

“Does he want that converted to jail, or do you want to try to pay that?

“(Sotto voce discussion between the defendant and Ms. Bosworth.)

“MS. BOSWORTH: He’ll arrange a payment plan.

“THE COURT: I don’t have him on probation on that case, so a payment plan is not going to work.

“(Sotto voce discussion between the defendant and Ms. Bosworth.)

“MS. BOSWORTH: He’d like to convert it to jail.

“THE COURT: Okay. I’ll convert that to 15 days’ jail consecutive to the time imposed in the felony case, so the 595 actual time is reduced to 580 days, as I’ve used 15 days there to convert to that fine.

“He’s entitled to 15 percent conduct credits under 2933.1, so I’ll give him 87 days of good time/work time credits added to the 580 days. That’s a total of 667 days’ credit against the eleven-year-four-month sentence imposed today.

“Is there anything else?

“MS. PRINCE: No, Your Honor.

“THE COURT: He’s committed to the Department of Corrections forthwith. The DUI time is deemed served.”

On February 13, 2009, defendant filed a notice of appeal from “the sentence . . . imposed in this matter of January 16, 2009.” The notice has “Case No. SC153842A,” on the caption.

DISCUSSION

According to the caption in his brief, defendant frames his sole contention as follows: “Because the trial court did not specify the components of the \$1,444 fine imposed for appellant’s DUI conviction, this court should remand with instructions that the trial court specify all components of that fine.” The Attorney General advances a pair of arguments why we are not required to address the merits of defendant’s contention.

First, the Attorney General suggests that the notice of appeal is ineffective: “Inasmuch as his appeal is in case no. SC153842A, not CR153784, appellant’s contention is not cognizable and the appeal should be dismissed.” “The notice of appeal must be liberally construed. . . . [T]he notice is sufficient if it identifies the particular judgment or order being appealed.” (Cal. Rules of Court, rule 8.304(a)(4).) In accordance with this rule, for example, a notice of appeal that—like here—purports to appeal from a sentence will be treated as perfecting a valid appeal from an appealable judgment of conviction, because “In a criminal case the sentence is the judgment.” (*In re Phillips* (1941) 17 Cal.2d 55, 68; accord, *People v. Rojas* (1975) 15 Cal.3d 540, 543,

fn. 1.) Moreover, here, the misdemeanor action CR153784 was in effect rolled into the felony action SC153384A. As shown by the excerpts from the sentencing hearing quoted above, there is no independent term of imprisonment for the misdemeanor because the six-month term is to be served concurrent with the eleven-year felony term. As will be shown, in plain effect the only consequence of the misdemeanor is in the computation of the custody credits that defendant was awarded as reflected in the felony action. In these circumstances, the notice of appeal is sufficient to bring the controversy to us for review. (See *In re Jordan* (1992) 4 Cal.4th 116, 131, fn. 9 and decisions cited.)

Second, the Attorney General argues that the record is inadequate to resolve the issue presented by defendant: “[T]he clerk’s transcript contains no documents from case no. CR153784. It is appellant’s burden to provide an adequate record showing the error calling for correction. [Citation.] For all we know, the record in case no. CR153784 reflects the individual components of the fine. Appellant’s claim must be dismissed for this reason as well.” Again, practical reality should govern. The only record necessary to review the point defendant presents are related to the sentencing of both the felony and the misdemeanor action, done at the same hearing. The record before us includes a reporter’s transcript of the joint sentencing hearing, which is enough. We therefore proceed to the merits.

“In all felony and misdemeanor convictions . . . all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment, or credited to any fine . . . at the rate of not less than thirty dollars (\$30) per day, or more, in the discretion of the court imposing the sentence.” (Pen. Code, § 2900.5, subd. (a).) It is far more common for this provision to be used in situations where the defendant’s term of incarceration is less than the number of days of custody credit he or she has accumulated. In those situations the statute allows the credits to be used to offset the amount of restitution fines and penalty assessments imposed, but not victim restitution. (A good discussion of how this process works may be found in *People v. McGarry* (2002) 96 Cal.App.4th 644, 647-648.) The situation here is the converse—defendant was willing to have his misdemeanor fine of \$1,444 converted at the rate of \$30 per day to

reduce the number of his custody credits, that is, to increase his sentence. This is not often seen at our level, but it is an accepted practice. (See, e.g., *People v. Mockel* (1990) 226 Cal.App.3d 581, 584 [“Mockel was sentenced . . . to 90 days in Kern County jail plus a fine of \$390 converted to 13 days’ additional jail time”].)

Thus, with defendant’s full assent, the \$1,444 misdemeanor fine was converted to custody debits that were subtracted from his existing credits. There is consequently no misdemeanor fine to break down into components. Defendant is attacking a non-existent target.

Three points deserve to be made. First, the trial court, as statutorily authorized, gave defendant far more than a \$30 offset per day of credit. The trial court only added 15 days, which works out to the very favorable rate of \$92.26 per day. Second, this procedure was done with defendant’s complete acquiescence, so there is no apparent reason not to apply the doctrines of either waiver or invited error. Third, because the misdemeanor fine was obliterated, this would seem to be a textbook instance of mootness, because there is no way defendant can get any effective relief from the alleged error.

DISPOSITION

The judgment of conviction is affirmed.

Richman, J.

We concur:

Kline, P.J.

Haerle, J.